



DEFENSE LOGISTICS AGENCY
HEADQUARTERS
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IN REPLY
REFER TO DG

December 30, 2003

MEMORANDUM CONCERNING THE PROPOSED DEBARMENT OF DENHAM AND
LEWIS PROCESSING, INC., RUBY COAL COMPANY OF LONDON, INC.,
WENDELL ELZA, CLAY LABORATORIES, INC., AND DENNIS STEELY

The Defense Logistics Agency (DLA) this day has issued Notices of Proposed Debarment to Denham and Lewis Processing, Inc., Clay Laboratories, Inc., Ruby Coal Company of London, Inc., Wendell Elza and Dennis B. Steely. The proposed actions are taken pursuant to the debarment procedures contained in the Federal Acquisition Regulation (FAR) Subpart 9.4, and the Defense FAR Supplement (DFARS) Subpart 209.4, and pursuant to the authority of the Federal Property Management Regulations (FPMR), 41 CFR 101-45.6 as reflected in DoD 4160.21-M, Chapter XVII.

The DLA actions are based on information in a report from the Defense Energy Support Center (DESC), a field activity of DLA located Fort Belvoir, Virginia. Information contained in the report from DESC indicates that Denham and Lewis Processing, Inc., Clay Laboratories, Inc., Ruby Coal Company of London, Inc., Wendell Elza and Dennis B. Steely lack the present responsibility to be Government contractors. The DESC report is hereby incorporated by reference as the Administrative Record.

INFORMATION IN THE RECORD

A summary of the information upon which the proposed debarments are based appears below:

1. Denham and Lewis Processing, Inc., (Denham and Lewis) conducts business with DESC. Specifically, Denham and Lewis delivered coal of a lesser quality than required under contracts with the DESC. Denham and Lewis is a coal processing plant commonly referred to as a "coal tipple." A coal tipple processes and sizes various grades of coal.
2. Ruby Coal Company of London, Inc., (Ruby Coal) engages in bituminous coal processing and coal mining. The company is related to Denham and Lewis through common ownership by Wendell Elza and Charles Elza.
3. Clay Laboratories, Inc., (Clay Labs) is a Kentucky corporation located in Manchester, Kentucky. The laboratory collects and analyzes coal samples to determine the quality and properties of the coal. Laboratory reports normally contain information on the sulfur content, ash content, moisture content, and British Thermal Units (BTU) output of the coal.



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4. During all or part of the time of the conduct described below, Wendell Elza was the president and chief executive officer of Denham and Lewis and Ruby Coal.

5. During all or part of the time of the conduct described below, Dennis Steely was the president, manager and owner of Clay Labs, owning 100% of the capital stock. Clay Labs is in the business of testing coal samples. Clay Labs altered lab tests and provided the altered test results to Denham and Lewis. This matter arose when an investigation by the Departments of Energy and Defense and the Tennessee Valley Authority indicated that Denham and Lewis forged mine authorizations that the Government relied upon in accepting offers for certain types of coal from specific seams of particular mines. Denham and Lewis provided the test results to the prime contractors knowing that the Government would rely upon these false reports.

DESCRIPTION OF DESC CONTRACT FAILURES

The following discussion concerns DESC contracts.

1. Denham and Lewis provided mine authorization forms to the prime DESC contractors, Southern Coke and Coal and Tru and Associates, Inc. The mine authorization forms represented that the coal would be supplied from specific mines and seams of coal operated by Leslie Resources. Instead of providing coal from the mines and seams specified in the contract, Wendell Elza obtained coal elsewhere. He also made fraudulent claims for payment, through the prime contractor, for the coal when he knew the coal did not comply with the terms, conditions, and specifications of the contract between DESC and the prime contractors.

2. Dennis B. Steely is the President, manager, and owner of Clay Labs. Denham & Lewis paid Steely to sample coal to be delivered to the Government from Denham and Lewis and for the laboratory examination and reports. Dennis Steely prepared or caused to be prepared false laboratory reports reflecting that the coal did comply with the contract when he knew the reports were false.

3. The Government paid for (and the specifications called for) "premium spec grade" coal, but in many instances Denham and Lewis actually shipped coal that was lower in quality and therefore cheaper to supply. Denham and Lewis records confirmed that the company bought only 39,000 tons from the authorized mines and seams, but shipped 112,000 tons. The cheaper coal had a high ash content and lower BTUs that did not meet specifications. The difference in value between the two grades was \$2.80 / ton, or a total of \$200,230.

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4. High ash coal may contain mineral impurities, among them Potassium Pentoxide (P2O5). When Wright-Patterson operated its boilers at full capacity during a 1996 emissions test conducted for the Ohio EPA, the buildup of P2O5 on boiler tubes caused stack temperatures to rise, destroying the electrostatic precipitators. Had the electrostatic precipitators been repaired, the cost would have been \$2.134 million. Other costs included cleaning the boilers (\$42,426), additional ash removal (\$38,956), expert consultation to determine what corrective action was required (\$97,000), buying natural gas so that the coal fired boilers could be shut down for early maintenance (\$394,104), conducting additional environmental compliance tests (\$35,000), and buying additional coal on the open market at \$53 / ton (instead of the \$44.66 / ton contract price) (\$169,663).

5. Denham and Lewis submitted an analysis from Clay Labs for each shipment that made the coal appear that it met specifications. However, documents seized from Clay Labs during the earlier criminal investigation revealed that test results for ash and BTU content had been altered. (The Government became suspicious when Clay Labs results were found to be inconsistent with results from the Army Petroleum Lab.) Additionally, Jewell Buckles, a Denham and Lewis employee, testified that Wendell Elza had her forge signatures on mine authorization forms (she thought it was OK because Wendell Elza told her to do it).

6. Investigative findings indicated that Wendell Elza and Dennis Steely conspired to cause the submission of false claims totaling \$5,586,083 for substandard coal that was supplied by Denham and Lewis under 11 DoD contracts. The investigation also found that Wendell Elza submitted false claims totaling \$6,018,385 for substandard coal that was supplied by Denham and Lewis under three DOE contracts awarded by the Fernald Environmental Restoration Management Company (FERMCO) and one contract awarded by the Westinghouse Savannah River Company (WSRC). The FERMCO and WSRC are Department of Energy (DOE) prime contractors and operate DOE facilities at Cincinnati, Ohio, and Aiken, South Carolina. Wendell Elza purchased and shipped coal from his Denham and Lewis tipple at East Bernstadt, Kentucky to DESC and DOE customers. This coal did not meet the specifications as to quality and source of the coal as required by these Government contracts. Dennis Steely falsified the coal lab reports which Denham and Lewis provided to the prime contractors and which were ultimately provided to the Government prior to shipment of coal to the contract destinations. The purpose of the "independent" lab analysis was to ensure that the coal conformed prior to shipment. To succeed in the fraud, Wendell Elza and Dennis Steely submitted or caused the submission of forged or falsified documents, including mine authorizations, producer statements, Clay Labs analytical test reports, and other documents.

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BASIS FOR THE PROPOSED DEBARMENT

Based on the summary of facts above, it appears that:

1. The information in the administrative record indicates that Denham and Lewis Processing, Inc., and Clay Laboratories have a history of unsatisfactory performance and of failure to perform on one or more Government contracts. The history of unsatisfactory performance and of failure to perform on one or more contracts with the Government provides a cause for their debarment, pursuant to FAR 9.406-2(b)(1)(ii).
2. The information in the administrative record indicates that Wendell Elza and Dennis B. Steely have a history of unsatisfactory performance and of failure to perform on one or more Government contracts. The history of unsatisfactory performance and of failure to perform on one or more contracts with the Government provides a cause for their debarment, pursuant to FAR 9.406-2(b)(1)(ii).
3. Pursuant to FAR 9.406-5(b), the fraudulent, criminal, or other seriously improper conduct of a contractor may be imputed to any officer, director, shareholder, partner, employee, or other individual associated with the contractor who participated in, knew of, or had reason to know of the contractor's conduct. The seriously improper conduct of Denham and Lewis and Clay Laboratories in their history of failure to perform and of unsatisfactory performance may be imputed to Wendell Elza and Dennis B. Steely because as an officer, director, shareholder, partner, employee, or other individual associated with the companies, they participated in, knew of, or had reason to know of the seriously improper conduct. The imputation of the seriously improper conduct of Denham and Lewis Processing and Clay Laboratories to Wendell Elza and Dennis B. Steely provides a cause for their debarment pursuant to FAR 9.406-2(c).
4. Pursuant to FAR 9.406(1)(b), debarment may be extended to affiliates of a contractor. As defined in FAR 9.403 ("affiliates"), Denham and Lewis Processing, Clay Laboratories and Ruby Coal of London and Wendell Elza and Dennis B. Steely are affiliates, because, directly or indirectly, either Wendell Elza and Dennis B. Steely controls or can control one of the companies. Their affiliation provides a separate and independent cause for their debarment, pursuant to FAR 9.406-2(c).



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